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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,115	04/16/2004	Gabriel Danziger	030537-0212	7660
22428	7590	04/21/2005	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			BELL, KENT L	
			ART UNIT	PAPER NUMBER
			1661	

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/825,115

Applicant(s)

DANZIGER, GABRIEL

Examiner

Kent L. Bell

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- application filed 4/16/04*
- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/16/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

K. L. Bell

Detailed Action

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

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In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, line 5, Applicant should place single quotation marks around "Danchryatpink" as this is the proper way to set forth a cultivar designation.

B. Page 1, lines 10-13, The origin of the instant plant is unclear. Applicant states the new cultivar originated "from a spontaneous mutation". It is unclear whether the instant plant arose as a "spontaneous mutation" or the instant plant arose from a spontaneous mutation. Correction and/or clarification is necessary. If the instant plant arose as a spontaneous mutation, applicant should set forth whether the instant plant arose as a "naturally occurring" mutation or an induced

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mutation. If induced, applicant should set forth in the specification the methodology used to arrive at the instant plant. Further, applicant sets forth a female parent. This is not understood especially as applicant originally stated the instant plant was a mutation. This would lead one to believe the instant plant originated from either an open pollination or a specific cross. Correction and/or clarification is necessary. The origin of the instant plant must be unambiguously set forth.

C. Page 1, lines 11 and 12, It appears the U.S. Plant Patent application set forth has matured into U. S. Plant Patent number 15,045. Applicant should verify whether this is accurate and if accurate correct the information set forth on these lines in the specification.

D. Page 3, line 10, Applicant states plant shape is "Corymb". This term typically describes an inflorescence. It is not clear how the entire plant shape can be described as "Corymb". Correction and/or clarification is necessary.

E. Page 3, line 14, Applicant should set forth whether the lastingness is on or off the plant.

F. Page 4, line 17, Applicant should delete "Flowers" as applicant has already stated Quantity of "inflorescences" on the same line.

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G. Applicant should set forth in the specification information relative to the instant plant's phyllaries including the typical and observed phyllary number, shape, length, width, apex, base, and margin descriptors, and coloration (both surfaces) with reference to the employed color chart.

H. Page 6, lines 14 and 17, Applicant states "Seeds: Achene" and seed shape is "Achene". Achene is a name of fruit that contains seed. Therefor, the recitations above appear to be incorrect. It appears "Achene" should be deleted at both lines. Applicant should set forth in the specification a seed shape.

I. Applicant should set forth in the specification where the androecium and gynoecium are located, for example, androecium on disc florets only and gynoecium on ray florets and disc florets.

The above listing may not be complete. Applicants should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

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Claim Rejection

35 U.S.C. 112, 1st & 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached at (571) 272-0811.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL
PRIMARY EXAMINER**

